

MICHIGAN CODE OF MILITARY JUSTICE OF 1980 (EXCERPT)

Act 523 of 1980

ARTICLE 9

32.1060 Forwarding record to convening authority as reviewing authority; exception; action on record.

Sec. 60. Except as provided in section 71, after a trial by a court-martial, the record shall be forwarded to the convening authority as reviewing authority. Action on the record may be taken by the person who convened the court, a commanding officer, or a successor in command.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1061 Referring record to state judge advocate; review and opinion.

Sec. 61. Except as provided in section 71 and before taking action in a general court-martial, the convening authority shall refer the record of each general court-martial to the state judge advocate who shall review the record and submit a written opinion on the record to the convening authority. The review shall include a summary of the evidence in the case, an opinion as to the adequacy and weight of the evidence, the effect of any error or irregularity reflecting the proceedings, and a specific recommendation as to the action to be taken by the convening authority. If the final action of the court resulted in an acquittal of the charges and specifications, the opinion shall be limited to questions of jurisdiction.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1062 Returning record to court for action; reasons.

Sec. 62. (1) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(2) If an apparent error or omission is in the record or if the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which cannot be rectified without material prejudice to the substantial rights of the accused, the convening authority shall return the record to the court for appropriate action. However, the record shall not be returned for any of the following reasons:

(a) Reconsideration of a finding of not guilty of a specification or ruling which amounts to a finding of not guilty.

(b) Reconsideration of a finding of not guilty of a charge, unless the record shows a finding of guilty under a specification laid under that charge which sufficiently alleges a violation of a section of this code.

(c) Increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory and the mandatory sentence is more severe than the sentence imposed by the court.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1063 Disapproval by convening authority of findings and sentence; reasons; rehearing; dismissal of charges; sentence.

Sec. 63. (1) If the convening authority disapproves the findings and sentence of a court-martial, the convening authority, except where there is lack of sufficient evidence in the record to support the findings, may order a rehearing. The convening authority shall state the reasons for disapproval. If the convening authority disapproves the findings and sentence and does not order a rehearing, the convening authority shall dismiss the charges.

(2) Each rehearing shall take place before a court-martial whose composition shall not include a member or military judge of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for an offense of which the accused was found not guilty by the first court-martial. A sentence in excess of or more severe than the original sentence shall not be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1064 Approval by convening authority of findings of guilty and sentence; approval of sentence as approval of findings.

Sec. 64. In acting on the findings and sentence of a court-martial, the convening authority may approve only those findings of guilty and the sentence or part or amount of the sentence as the convening authority finds correct in law and fact and as the convening authority in the authority's discretion approves. Unless the convening authority indicates otherwise, approval of the sentence is approval of the findings.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1065 Finality of action on review of trial record where governor is convening authority; review of trial record by state judge advocate general; opinion; final action; authority of governor or state judge advocate general in reviewable cases; instructing convening authority to take action pursuant to state judge advocate general's decision or review; exception; dismissal of charges upon finding rehearing impracticable; boards of review; composition; authority and powers; effect of error of law on finding or sentence; approving or affirming so much of finding of guilty which includes lesser included offense.

Sec. 65. (1) If the convening authority is the governor, the action on the review of a record of trial shall be final.

(2) In all other cases:

(a) If the convening authority has taken final action in a general court-martial case, the convening authority shall forward the entire record including the action on the case and the opinion of the staff judge advocate or legal officer to the state judge advocate general for review.

(b) If the sentence of a special court-martial as approved by the convening authority includes a bad conduct discharge, whether or not suspended, the record shall be forwarded to the officer exercising general court-martial jurisdiction over the command, to be reviewed in the same manner as a record of trial by a general court-martial. If the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad conduct discharge, whether or not suspended, the entire record including the officer's action on the sentence and the opinion of the staff judge advocate, shall be forwarded to the state judge advocate general for review.

(c) All other special and summary courts-martial records shall be forwarded to a judge advocate and shall be acted upon, transmitted, and disposed of as prescribed by rules promulgated pursuant to section 147.

(3) The state judge advocate general shall review the record of trial in each case forwarded for review as provided in this section. If the sentence as approved affects a general officer or extends to the dismissal of an officer, the state judge advocate general shall submit a written opinion on the sentence to the governor. If the final action of the court-martial in a case forwarded to the state judge advocate general results in an acquittal of the charges and specifications, the opinion of the state judge advocate general shall be limited to questions of jurisdiction.

(4) In each case reviewable by the state judge advocate general which does not affect a general officer or extend to the dismissal of an officer, the state judge advocate general shall take final action.

(5) In a case reviewable by the governor in which the governor is not the convening authority and in a case reviewable by the state judge advocate general, the governor or the state judge advocate general shall have authority to do any of the following:

(a) Act only with respect to the findings and sentence as approved by the convening authority.

(b) Affirm only those findings of guilty, and the sentence or that part or amount of the sentence as the governor or the state judge advocate general finds correct in law and fact and determines on the basis of the entire record should be approved.

(c) Weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) Order a rehearing if the governor or the state judge advocate general sets aside the findings and sentence, except if the setting aside is based on lack of sufficient evidence to support the findings.

(e) Order that the charges be dismissed if the governor or the state judge advocate general sets aside the findings and sentence and does not order a rehearing.

(6) Unless the governor is to take further action, the state judge advocate general shall instruct the convening authority to take action pursuant to the state judge advocate's decision on a review. If a rehearing has been ordered, but the convening authority finds a rehearing impracticable, the state judge advocate general may dismiss the charges.

(7) The state judge advocate general may constitute 1 or more boards of review each composed of not fewer than 3 officers of the organized militia or retired list, each of whom shall be a member of the bar of this state, which board of review shall review the record of a trial by court-martial referred to it by the state judge advocate general. The board of review shall have the same authority and powers on the review of a record as the state judge advocate general has under this section.

(8) A finding or sentence of a court-martial shall not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(9) A reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm so much of the finding which includes a lesser included offense.

History: 1980, Act 523, Eff. Mar. 31, 1981.

Administrative rules: R 32.171 et seq. of the Michigan Administrative Code.

32.1066 Final military review of sentence of general court-martial or of sentence to dishonorable discharge by special court-martial; right to counsel; appointment by convening authority; representation by civilian counsel.

Sec. 66. (1) Upon the final military review of a sentence of a general court-martial or of a sentence to a dishonorable discharge by a special court-martial, the accused has the right to be represented by counsel before the reviewing authority.

(2) Upon the request of an accused entitled to be represented, the convening authority shall appoint a commissioned officer who is a member of the bar of this state to represent the accused before the reviewing authority or before the staff judge advocate, and before the state judge advocate general, in the review of cases specified in subsection (1).

(3) An accused entitled to be represented may be represented by civilian counsel if provided by the accused before the reviewing authority, the staff judge advocate, or legal officer and before the state judge advocate general.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1067 Military appeals tribunal; establishment; location; appointment, reappointment, and terms of members; eligibility; appointment and duties of chairperson; quorum; concurrence necessary for decision; removal of member; legal, technical, and secretarial assistance; compensation and expenses; appellate jurisdiction; petition for review; action by tribunal; granting stay or deferring service of sentence; setting aside findings and sentence; ordering rehearing or dismissing charges; returning record to state judge advocate general; further action.

Sec. 67. (1) A military appeals tribunal is established and located for administrative purposes only in the department of military affairs. The tribunal shall consist of 5 members appointed by the governor, by and with the advice and consent of the senate, for a term of 4 years. Initial appointments to the military appeals tribunal shall be 1 member for a 2-year term, 2 members for a 3-year term, and 2 members for a 4-year term. The term of office of all successor members shall be for a 4-year period. A member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the unexpired term of the predecessor. A member may be reappointed and a vacancy shall be filled for an unexpired term in the same manner as an appointment is made for a full term. A person is eligible for appointment to the military appeals tribunal if the person is a commissioned officer or a civilian and licensed to practice law in this state.

(2) The governor shall appoint the chairperson of the tribunal. The chairperson shall have general supervisory control of and be in charge of the assignment of the work of the tribunal.

(3) A majority of the tribunal shall constitute a quorum. The military appeals tribunal shall sit as a panel of 3 members. The concurrence of 2 members shall be necessary for a decision of the tribunal.

(4) A member of the military appeals tribunal may be removed by the governor, upon notice and hearing, for neglect of duty, or malfeasance in office, or for mental or physical disability.

(5) Subject to appropriations by the legislature, the military appeals tribunal shall have the legal, technical, and secretarial assistance as the chairperson considers necessary.

(6) The members of the military appeals tribunal while actually sitting in review of a matter submitted to their jurisdiction by this code, and while traveling to and from the session, shall be paid daily compensation equal to 1/250 of the state salary paid to circuit court judges together with the actual cost of their meals, lodging, and actual travel expenses or the amount set by the existing appropriation if private transportation is utilized.

(7) The military appeals tribunal shall have appellate jurisdiction, upon the petition of an accused, to hear and review the record in all decisions of a court-martial after the review provided in this article has been completed.

(8) The accused has not more than 60 calendar days, from the time of the receipt of actual notice of the final action on the accused's case, under this code to petition the military appeals tribunal for review. The tribunal shall act upon the petition not more than 60 calendar days after the receipt of the petition. The military appeals tribunal may grant a stay or defer service of the sentence of confinement or any other punishment under this code until the tribunal's final decision in the case.

(9) In a case reviewable under subsection (6), the military appeals tribunal shall act only with respect to the findings and sentence as finally approved and ordered executed by the convening authority.

(10) If the military appeals tribunal sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the tribunal sets aside the findings and sentence and does not order a rehearing, the tribunal shall order that the charges be dismissed. After the military appeals tribunal acts on the case, the record shall be returned to the state judge advocate general, who shall notify the convening authority of the tribunal's decision. If further action is required, the state judge advocate general shall instruct the convening authority to take action pursuant to that decision. If the tribunal has ordered a rehearing, but the convening authority finds a rehearing impracticable, the state judge advocate general shall dismiss the charges.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1068 Appeal from final decision of military appeals tribunal.

Sec. 68. An appeal may be taken to the state court of appeals from any final decision of the military appeals tribunal.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1070 Trial counsel and defense counsel to serve as appellate counsel; right to civilian counsel; disability of defense or trial counsel.

Sec. 70. The trial counsel and defense counsel of a court-martial shall serve in the capacity of appellate counsel upon an appeal authorized under this code. The accused has the additional right to be represented by civilian counsel at his or her own expense. If the defense or trial counsel becomes unable to perform his or her duties because of illness or other disability, the convening authority shall appoint a qualified trial or defense counsel to continue the proceedings.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1071 Execution of sentence; approval; suspension.

Sec. 71. (1) A court-martial sentence involving a general officer or extending to the dismissal of an officer other than a general officer shall not be executed until approved by the governor. The governor may approve the sentence or a part, amount, or commuted form of the sentence and may suspend the execution of the sentence or any part of the sentence.

(2) A sentence which includes an unsuspended, dishonorable, or bad conduct discharge shall not be executed until approved by an officer exercising general court-martial jurisdiction. That officer may approve the sentence or a part, amount, or commuted form of the sentence and may suspend the execution of the sentence or any part of the sentence.

(3) Any other court-martial sentence, unless suspended, may be ordered executed by the convening authority when approved by the convening authority. The convening authority may approve the sentence or a part, amount, or commuted form of sentence, and may suspend the execution of the sentence or any part of the sentence.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1072 Violation of probation; hearing; representation by counsel; sending record of hearing and recommendation for action to governor or commanding officer of force; vacating suspension of sentence.

Sec. 72. (1) Before the vacation of the suspension of a special court-martial sentence which, as approved, includes a dishonorable or bad conduct discharge, or of a general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if the probationer desires.

(2) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the governor in cases involving a general court-martial sentence and to the commanding officer of the force of the state military forces of which the probationer is a member in all other cases covered by subsection (1). If the governor or commanding officer vacates the suspension, the unexecuted part of the sentence shall be executed.

(3) The suspension of any other sentence may be vacated for the command in which the accused is serving or assigned, by an authority competent to convene a court of the kind that imposed the sentence.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1073 Petition for new trial; grounds; time limitation.

Sec. 73. Not later than 1 year after approval of a court-martial sentence, pursuant to section 71, which extends to dismissal or dishonorable discharge, the accused may petition the governor for a new trial on the

grounds of newly discovered evidence or fraud.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1074 Remitting or suspending part or amount of unexecuted sentence; substituting administrative form of discharge for dishonorable discharge or dismissal.

Sec. 74. (1) A convening authority may remit or suspend any part or amount of the unexecuted part of a sentence, including all uncollected forfeitures.

(2) The governor, for good cause, may substitute an administrative form of discharge for a dishonorable discharge or dismissal executed pursuant to a sentence of a court-martial.

History: 1980, Act 523, Eff. Mar. 31, 1981.

32.1075 Restoration of rights, privileges, and property affected by executed part of court-martial sentence that is set aside or disapproved; exception; substituting administrative form of discharge where previously executed sentence of dishonorable discharge or dismissal not imposed on new trial; exception; reappointment of dismissed officer.

Sec. 75. (1) Each right, privilege, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and the executed part is included in a sentence imposed upon the new trial or rehearing.

(2) If a previously executed sentence of dishonorable discharge is not imposed on a new trial, the governor shall substitute a form of discharge authorized for administrative issuance, unless the accused is to serve out the remainder of his or her enlistment.

(3) If a previously executed sentence of dismissal is not imposed on a new trial, the governor shall substitute a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the governor to the commissioned grade and with the rank, in the opinion of the governor, that the former officer would have attained had the former officer not been dismissed. The reappointment of the former officer may be made if a position vacancy is available under applicable tables of organization. All time between the dismissal and reappointment shall be considered as service.

History: 1980, Act 523, Eff. Mar. 31, 1981.